

## **Part 504 – Technical Service Provider Assistance**

### **Subpart A – Purpose, Authorities, Exclusions and References**

#### **504.XX Purpose**

This directive establishes the U.S. Department of Agriculture (USDA), Natural Resources Conservation Service (NRCS) national policy for Technical Service Provider (TSP) Assistance.

#### **504.XX Authorities**

A. Section 1242 of the Food Security Act of 1985, as amended by the Farm Security and Rural Investment Act of 2002, Public Law 107–171, May 13, 2002 (referred to as the 2002 Farm Bill), specifically provides for delivering technical assistance to a producer directly or through a payment for an approved third party, if available. It also calls for:

- (1) Establishing a system for approving individuals, entities, public agencies and American Indian Tribes and individuals to provide technical assistance through:
  - (a) Establishment of criteria for the evaluation of potential or approved providers of technical assistance, and
  - (b) Establishing the amounts and methods for payments for that assistance.
- (2) Executing agreements or contracts to help provide technical assistance necessary to develop and implement conservation programs.

B. The Commodity Credit Corporation (CCC) Charter Act, 15 U.S.C. Section 714m, Crimes and Offenses.

C. USDA Departmental Regulation (DR), DR XX10-2, Management Accountability and Control.

#### **504.XX Exclusions**

The adjusted gross income limit contained in the 2002 Farm Bill is not applicable to services provided by TSPs.

#### **504.XX References**

The policy does not pertain to conservation program appeals and mediation and related roles and responsibilities, which are provided in Title 440, Conservation

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Programs Manual, Part 510, Appeals and Mediation; and Title 230, General Manual, Part 401, Equal Employment Opportunity, Section 401.45, Alternative Dispute Resolution.

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### **Subpart B – Equal Access**

#### **504.XX Equal Access**

- A. All individuals have equal access to USDA conservation programs, services, and available TSP assistance including American Indian Tribes and individuals, socially disadvantaged producers, beginning farmers and ranchers, limited resource farmers, and historically underserved groups and individuals. This equal access includes opportunities to become certified and to provide technical services as a TSP.
- B. All technical services provided will comply with civil rights legislation and other directives, nondiscrimination statutes, and related USDA and NRCS regulations.

#### **504.XX American Indian Tribes and Individuals**

- A. NRCS has a “trust” responsibility to deliver service to American Indian Tribes through a government-to-government relationship.
- B. All American Indian Tribes and individuals have equal access to USDA conservation programs, services, and available TSP assistance, including opportunities to be certified and to provide technical services as a TSP.

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### **Subpart C – Policy**

#### **504.XX NRCS Policy**

- A. Individuals, private sector entities, public agencies and American Indian Tribes and individuals:
  - (1) Must be certified as TSPs by NRCS or under contract or agreement with USDA before providing technical assistance to participants; and
  - (2) Are responsible for all expenses associated with becoming certified as a TSP or with renewing certification.
- B. NRCS will:
  - 1. Establish a national certification, certification renewal, decertification, and recertification processes for TSPs.
  - 2. Subject to availability of funds ensure that participants in conservation programs receive necessary technical assistance directly from NRCS or through assistance from a TSP.
  - 3. Reimburse participants or make direct payment to TSPs upon receipt of an assignment of payment from program participants.
  - 4. Establish and publish payment rates, called not-to-exceed (NTE) rates, applicable when participants contract directly with TSPs for technical services; allow for state-level adjustment of NTE rates on a case by case basis; require state-level coordination of NTE rates between adjacent states where needed; and review payment rates at least annually and adjust the rates based upon available data.
  - 5. Ensure that the process to make payments for TSP services is in accordance with the policy specific to the conservation program being utilized.
  - 6. Implement an accountability system to measure and monitor progress, overall use, performance, and accomplishments of certified TSPs.
  - 7. Make technology and technological tools widely available for use by TSPs, reserving the option to apply fees to specific technology and tools.
  - 8. Retain responsibility for all decision-making and consultation required by Federal agencies related to compliance with resource protection laws.

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9. Use NRCS appeals and mediation policy to resolve disputes regarding technical services acquired from TSPs.
10. Incorporate appropriate bonding and insurance requirements in any contract or agreement entered into with a TSP.
11. Follow policy and procedures regarding technical assistance waste, fraud, and abuse and reporting mechanisms.

### C. Technical Service Providers:

1. Must be certified by NRCS or under an agreement or contract with NRCS in order to provide technical assistance directly to program participants.
2. Must ensure that assistance provided to participants meets USDA and NRCS technical standards and specifications.
3. Are responsible for obtaining training they need to become certified as TSPs, for establishing and maintaining training records, and providing training documentation to NRCS or to recommending organizations.
4. May utilize the services of certified subcontractors, as provided by NRCS policy. (See TSP Handbook, Subpart E, XXX.52)
5. May help collect or assess data to support processing program applications, but administrative and program responsibility will remain with USDA, including determining eligibility, ranking applications, approving contracts, practice payments, etc.
6. May work with participants to help ensure that all approvals, authorities, rights, permits, and easements necessary for the implementation, operation, and maintenance of conservation practices have been obtained prior to conservation practice installation when the scope of services agreed upon includes check-out.
7. Are responsible for the technical services provided, including any costs, damages, claims, liabilities, and judgments arising from past, present, and future negligent or wrongful acts or omissions of the TSP in connection with the technical service provided and must accept responsibility in writing for the particular technical services provided.
8. May be decertified if they do not abide by the requirements of the certification agreement.

### D. Participants:

- (1) May select either NRCS or a TSP to perform the technical services needed.

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- (2) Must meet the eligibility requirements for and enter into a conservation program contract or, if not under contract and at the option of the State Conservationist or Director, Pacific Basin Area or Caribbean Area, a written agreement before employing the services of a TSP, to qualify for reimbursement of TSP expenses.
- (3) Will receive reimbursement for the technical services provided by a TSP up to the NRCS-determined not-to-exceed rate, or the rate determined by the State Conservationist.
- (4) Are responsible for meeting compliance and regulatory responsibilities, obtaining necessary records, and ensuring payment provisions are included in the conservation program contract or agreement prior to employing TSP services.

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**Subpart D – Freedom of Information Act and Privacy Act**

**504.XX Confidentiality of Participant Personal Information.**

- A. When the participant is receiving technical services from TSPs hired by NRCS, the inclusion of a non-disclosure clause must be included by NRCS in NRCS agreements and contracts to ensure that confidentiality of a participant's information is maintained.
- B. TSPs are not subject to Federal disclosure and privacy laws, including the Freedom of Information Act and the Privacy Act. Consequently, participants are solely responsible for including appropriate confidentiality of personal information in contract entered into with TSPs.

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### **Subpart E – Roles and Responsibilities**

#### **504.XX NRCS National Headquarters Officials.**

- A. The Deputy Chief for Science and Technology, under the leadership of the Chief, will provide leadership for efficient and effective TSP activities.
- B. The Deputy Chiefs for Soil Survey and Resource Assessment, Programs, Strategic Planning and Accountability, and Management will provide leadership in support of efficient and effective TSP activities by carrying out their respective responsibilities.

#### **504.XX Regional Assistant Chiefs.**

- A. Provide overall leadership and supervision and management direction to assigned State Conservationists and Directors of the Pacific Basin and Caribbean Areas to ensure efficient and effective TSP operating processes.
- B. Participate in appraisals, reviews, and inspections, as assigned.
- C. Ensure consistent state-level application of agency TSP policies and procedures.

#### **504.XX State Conservationists and Directors of the Pacific Basin and Caribbean Areas.**

- A. Provide state-level leadership to ensure efficient and effective operations for TSP activities.
- B. Modify memorandums of understanding (MOUs) and agreements with conservation partners that choose to operate as a TSP acquired directly by participants as needed.
- C. Work with universities, colleges, land grant institutions, cooperative extension service, public agencies, certifying organizations, private entities, and other sources to identify, develop, and make available the training needed for individuals, entities, public agencies and American Indian Tribes and individuals to become TSPs, as well as professional development opportunities for certified TSPs.
- D. Ensure that appropriate Web-based and other formatted state-level technical, programmatic, and related reference documents and tools are available to TSPs.



- E. Ensure that technical services from TSPs and opportunities to become TSPs are fully available to all, including American Indian Tribes and individuals, socially disadvantaged producers, beginning farmers and ranchers, limited resource farmers, and historically underserved groups and individuals.
- F. Disburse payments for services rendered under approved contracts and agreements.
- G. Verify credentials of TSP applicants in their state/Pacific Basin or Caribbean Area to ensure they meet certification criteria.
- H. Conduct quality assurance reviews and spot checks of TSP technical service provided in accordance with Title 450, General Manual, Part 407, Documentation, Certification, and Spot Checking and Title 340, General Manual, Part 404, Evaluations, to ensure consistency with NRCS policies, procedures, and guidelines, and compliance with all regulatory requirements.
- I. Conduct a review session with the Farm Service Agency and other appropriate agencies or entities at least annually on the use and effectiveness of TSP assistance, and elevate needed changes.
- J. Identify, address or elevate TSP-related issues and concerns that surface.

#### **504.XX Area Conservationists and Assistant State Conservationists for Field Operations.**

- A. Provide area-level leadership to ensure efficient and effective operations for TSP activities.
- B. Carry out contracting, quality assurance, oversight, and other duties as assigned by State Conservationists and the Directors of the Pacific Basin and Caribbean Areas.
- C. Identify, address or elevate TSP-related issues and concerns that surface.

#### **504.XX District Conservationists and Designated Conservationists.**

- A. Provide leadership and serve as the agency point of contact regarding technical services provided at the local level by TSPs.
- B. Receive the TSP's signed technical certification stating that the technical services provided meet NRCS standards and are documented in accordance with agency policy and guidance.
- C. Maintain a landowner case file that includes documentation of technical services provided by TSPs.

D. Certify that the documentation meets NRCS policy as required by the appropriate NRCS statement of work document found in the electronic Field Office Technical Guide and approve program payments.

E. Carry out responsibilities identified in the state quality assurance plan to evaluate the quality of technical assistance provided by TSPs.

#### **504.XX Technical Service Providers**

- A. Take all necessary training and provide all required documentation to become certified.
- B. Be responsible for all costs associated with becoming certified as a TSP.
- C. Abide by all requirements of NRCS policy and the Certification Agreement.
- D. Assume legal responsibility for technical services they provide and must:
  - Comply with all applicable Federal, State, Tribal, and local laws and requirements.
  - Meet applicable USDA standards, specifications, program requirements, and be documented in accordance with the appropriate statement of work; and
  - Stay consistent with and meet the particular conservation goals and objectives for the program agreement or contract the participant entered into with NRCS.

#### **504.XX Participant**

- A. Selecting NRCS or a TSP to perform the technical services needed in conjunction with their conservation program contract or agreement.
- B. If choosing a TSP, selecting, hiring, contracting with, and paying the TSP, meeting compliance and regulatory responsibilities, and providing NRCS with the necessary documentation when the technical services have been completed.
- C. Obtaining necessary records or authorize in writing to NRCS the disclosure of their records on file with NRCS that they wish to make available to specific TSPs.
- D. Ensuring a TSP they wish to hire is not decertified by checking the decertified list.
- E. Have an approved program contract or other agreement with NRCS that includes payment provisions or authorization for specific technical services prior to employing the services of a TSP to be eligible for reimbursement.

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### **Subpart F – Ethics**

#### **504.XX Memorandums of Understanding and Associated Agreements**

A. Memorandums of Understanding and associated agreements between NRCS, conservation partners and American Indian Tribes will need to be evaluated and modified to avoid inappropriate use of Government resources, non-public information, or conflicts of interest or the appearance thereof for those that choose to engage in providing technical services as TSPs in accordance with participant acquisition of technical services.

#### **504.XX NRCS Employees**

A. NRCS employees are prohibited from:

- (1) Providing references for TSP applicants.
- (2) Recommending specific TSPs to participants.

B. Employee involvement in TSP

There are potential ethics issues when an NRCS employee seeks to also serve as a TSP, has a financial interest in a TSP, or seeks to work under the auspices of a TSP. Accordingly, NRCS employees should consult with the NRCS Ethics Office before acting in any of these capacities to ensure that they do not run afoul of government ethics rules.

- (1) Approval to Engage in Outside employment. Certain NRCS employees must obtain prior approval from the State Conservationist or Deputy Chief for Management before engaging in outside employment. The requirement to obtain approval before engaging in outside employment applies to all financial disclosure report filers, except Special Government Employees. Traditionally, it has been NRCS policy not to approve outside employment that could appear to be an extension of the employee's official work. Therefore, State Conservationists generally will not give approval for a covered employee to engage in outside employment related to TSP if it:

- Would appear to be an extension of NRCS duties;
- Might be interpreted by the general public as NRCS work; or
- Might raise a question of unfair advantage based on access to non-public information

Employees who are not financial disclosure report filers are not required to obtain NRCS approval to engage in outside employment. However, the ethics rules relating to conflicting interests and prohibited representation do apply.

- (2) Conflicting Interest. Ethics rules prohibit a Government employee from taking official actions on particular matters affecting the employee's financial interests.

Employees with outside activity involving TSP are reminded that these rules also prohibit them from working on matters in their NRCS capacity that affect the interest of a landowner with whom they are involved as a TSP.

- (3) Prohibited representation. Federal employees considering outside activity related to TSP are reminded that there are ethics laws that generally bar Federal employees from representing anyone else before Federal agencies other than in the proper discharge of official duties. 18 U.S.C. 203 prohibits an employee from receiving compensation based on anyone's representations before NRCS, on behalf of another, intended to influence in relation to any particular matter in which the Government is a party or has a substantial interest. 18 U.S.C. 205 prohibits an employee from personally representing anyone else, with or without compensation, with the intent to influence, before a Federal agency or employee.